

PHYSICAL FITNESS REGULATION

CHAPTER 28. DEPARTMENT OF CONSUMER AFFAIRS S.C. Code Regs. 28-100 (1996)

28-100. Physical Fitness Services Center--Certificate of Authority.

(A). Definitions

Definitions shall be those contained in the South Carolina Physical Fitness Services Act, S.C. Code Ann. Section 44-79-20 et seq. and the following:

Cash price -- The price at which goods or services are offered for sale by the seller to cash buyers in the ordinary course of business, and may include applicable sales tax and the cash price of accessories or related services. The cash price stated by the seller to the buyer in the physical fitness agreement is presumed to be the cash price. The term does not include any finance charge.

Time price differential -- The difference between the price paid in installments (time-price) and the cash price. Discounts for the purpose of inducing payment by a means other than the use of credit will be considered finance charge. For example, a physical fitness services provider offers contracts of \$1,000.00 each. If the buyer pays cash, the price is \$900.00, but if the buyer pays for the contract with the physical fitness provider in installments over time, the price is \$1,000.00. The \$100.00 difference is a finance charge for those who buy the agreement on credit. This definition does not apply to the use of a credit card.

(B). Certificate of Authority

(1). All organizations wishing to provide physical fitness services in this State must first obtain a Certificate of Authority from the Administrator of the Department of Consumer Affairs. Initial applications for the Certificate will be made on the form prescribed by the Administrator.

(2). Certificates of Authority expire each December 31 but may be renewed upon payment of a renewal fee of \$ 50.00 per outlet on or before December 31. The renewal period will be between November 1 and December 31 of each year. Renewal applications for the Certificate will be made on the form prescribed by the Administrator.

(3). Issuance of a Certificate of Authority does not indicate approval or acceptance of the terms of any contract, agreement or other document submitted in support of the application. No organization providing physical fitness services shall in any way represent that its services, payment schedules or terms of membership are approved by the State or any state agency.

(4). Physical fitness centers presenting a surety bond or other evidence of financial responsibility in accordance with Section 44-79-80 of the Physical Fitness Services Act must do so in accordance with the following value schedule:

(a). Multiple (2 or more) outlets: \$ 25,000 amount.

(b). Single outlets: [See table in the printed copy.]

Financial Responsibility

Members

Amount

300 or more \$25,000

200 to 299 20,000

100 to 199 15,000

1 to 99 10,000

(c). Any variation from the value schedule must be approved by the Administrator or his designee.

(5). Within 45 days of a membership or outlet increase that puts the physical fitness center(s) into a new financial responsibility category, the physical fitness center(s) must present financial responsibility in the new amount to the Administrator. Failure to provide amended evidence of financial responsibility as required by this subsection will be regarded as a violation of the Physical Fitness Services Act.

C. Recordkeeping

(1) All books, membership contracts or agreements and records, and all other sources of information with regard to the business of providing physical fitness services must at all reasonable times be available for inspection by the Department of Consumer Affairs for the purpose of assuring that the business is being transacted in accordance with the law and applicable regulations. Failure to provide or allow access to all books, membership contracts or agreements and records and all other sources of information with regard to the business of providing physical fitness services will be regarded as a violation of the Physical Fitness Services Act.

(2) All centers must maintain a copy of all agreements for physical fitness services for as long as such agreements are in effect and for a period of one (1) year thereafter. Agreements for each calendar year must be filed in alphabetical order by the consumer's last name. If the physical fitness provider uses numerically sequenced agreements, the agreements may be filed in numerical sequence instead of alphabetical order.

(3) Records and account systems maintained in whole or in part by electronic data processing may be used in lieu of the books, files and records required by these regulations if they contain equivalent information and such information is accessible to the Department.

D. Agreements

In the event an agreement includes a time-price differential, the cash price must be listed on the agreement separate from required Truth-in-Lending disclosures. A notice in substantially the following form complies with this regulation:

You have agreed to: (check one)

() pay (name of physical fitness provider) the membership fee of \$----- now, which is the CASH PRICE, or

() pay to (name of physical fitness provider) the CASH PRICE in installments plus a FINANCE CHARGE in accordance with the schedule in this agreement.

E. Advertisements

(1) All advertisements by a physical fitness provider must contain the name and an office address of the entity, which must conform to a name and address on record with the Department of Consumer Affairs.

(2) All restrictions on use of special offers for memberships must clearly and conspicuously be disclosed in the advertisement. These restrictions include but are not limited to the time and day usage as well as equipment or area restrictions.

(Statutory Authority: 1976 Code " 44-79-10, 44-79-80, 44-79-90, 44-79-100, and 44-79-120)

Statutory Authority: 1976 Code Sections 37-3-503, 37-6-104, 37-6-403, 37-6-506, 37-11-80 and 40-68-20

Added by State Register Volume 14, Issue No. 4, eff April 27, 1990 Amended by State Register Volume 18, Issue No. 2, eff February 25, 1994

NOTES: EFFECT OF AMENDMENT--

The 1994 amendment, rewrote A and B(5), and added C, D and E